

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

WILLIAM A. MERRITT,  
Plaintiff,

v. Civil Action No. 2:09-cv-00522

RUSSELL MATHENY, et al.,  
Defendants

**MEMORANDUM OPINION AND ORDER**

Before this court is plaintiff William A. Merritt's motion requesting permission to attend the pre-trial conference scheduled for October 3, 2011, at 1:00 p.m., in person or via video conference. Plaintiff is incarcerated at Mt. Olive Correctional Center, and is unable to otherwise attend the conference.

In support of his motion, the plaintiff asserts that while the Court's scheduling order does not require that parties are required to attend the final pre-trial conference, it does require that individuals with settlement authority are to be present either in person or by telephone.

The Civil Rights of Institutionalized Persons Act provides that, to the extent practicable in any action brought with respect to prisons conditions in federal court pursuant to 42 U.S.C. § 1983, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility, "shall be

conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined." 42 U.S.C. § 1997(e)(f)(2). Further, a party in a civil case has no constitutional right to attend a pre-trial conference. Thus, the court respectfully requests that the plaintiff be made available by telephone on October 3, around 1:00 p.m. to give settlement authority, in the event that it is required.

For the reasons stated herein, the plaintiff's motion to attend the pre-trial conference in person or by video-conference is otherwise **DENIED**.

It is so **ORDERED** on this 30<sup>th</sup> day of October, 2011.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge